Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.
LEGAL NEWS NOTES AND FACETIÆ.

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CASE AND COMMENT.

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Bar Associations.

"What good have I gotten out of it?" is the question which the Michigan Law Journal reports as coming from a prominent lawyer on paying his belated annual dues to the State Bar Association. Perhaps he has never heard about "the duty which every lawyer owes to his profession," or has seen it referred to only in the very virtuous preface of some hack-written law book as an ostensible reason for the existence of that creation. If, on the other hand, he does in fact recognize the obligation to his profession, which is a more agreeable supposition, he may have asked the question to test the utility of the association.

For all the good results they show, some bar associations might be supposed to represent bar tenders instead of members of the bar. Yet, there are unmistakable signs of improvement and progress, and the intellectual vigor and public spirit of members of the bar are undoubtedly destined to accomplish much for the public welfare through the medium of such associations.

Journalistic Rebukes of Crime.

The "Nathan said unto David" style of expression in respect to political criminals is much less common than the denunciation of their crimes in the abstract. Fear of hurting "business," if not of getting into libel suits, make the utterances of many journals tame, while the private opinions of their editors are vigorous. No journal shows more fearlessness in this respect than the Chicago Legal Adviser. The vigor, for instance, with which it talks to anarchists *et id omne genus* is exhilarating. This journal is in striking contrast with most newspapers in the fact that it "calls names" just as readily when talking about prominent citizens or officials as when describing the news of the police court. With the average newspaper, much as it delights in a sensation, it makes all the difference in the world, whether a person on a "drunk" is a man of position and influence or a tough from the back alley. A spree in a tumble-down tenement is "news." But disgraceful intoxication at a public banquet, if such a thing happens, or the intoxication on the street of a person holding high public office, or any other disgraceful condition or situation of such a person, however public the matter may become by personal report of those acquainted with the facts, does not become news for the newspapers. No matter how much the public ought to know of the facts as affecting the fitness of such persons for public positions which they occupy or aspire to, the facts are learned only by word of mouth and not by newspaper report.

Criticism of Courts.

No court in the United States is exempt from criticism, but to have any criticism upon it fair and just is the right of every court. The matter is chiefly important, not to the courts or judges, but to the people of the nation. The respect for law, which all concede to be the very foundation of civil government, is tested largely by respect for the courts which administer the law. Captious and chronic critics of the courts do more than they could possibly do in any other way to teach

hatred of the law itself. The insidious notion that law means tyranny, which is all the time fermenting in crime-diseased and morbid brains is quickened and intensified by every charge of corruption or unfairness in the administration of law. The criticism of judicial decisions as unsound or wrong in law may be the privilege of every citizen, whether he is capable of judging the matter or not, and if criticism of this sort is in any case worthless, it is likely to be also harmless. But when courts are attacked as corrupt or unfair, the falsity of the accusation, and even the recklessness or malice of the libeler, does not prevent the charges from finding lodgment in the minds of many who have no means of knowing the truth of the matter. It is a serious thing that among so large a portion of the less intelligent citizens there is so wide spread a belief that money and influence can accomplish anything in the courts. To intelligent people, especially to members of the bar who know how incorruptible is the judiciary of America,—how rare and almost unknown among the great number of judges, high and low, is the existence of corruption in any form or to any degree,—this suspicion and distrust of the more ignorant portion of the people is painful and alarming, at the same time that it arouses indignation. The explanation of this evil suspicion is to be found partly in the suspicious nature of ignorant people, especially those who are not very honest themselves, and partly in the reckless charges of demagogues to advance their own purposes. Even among newspapers of good standing, some are criminally reckless in this matter, when political purposes are to be served. It is not necessary to go back of the late Pullman strike to find abundant illustrations of this fact.

An Unexpected Illustration.

Among the instances of dishonest or criminally reckless attacks on the courts, although it is one of the mildest, none could be more surprising, considering the eminence of the court and the honorable past history of the journal, than that recently made by Harper's Weekly on the decision by the United States Supreme Court, that an income tax was not a "direct tax" within the meaning of the constitutional provision that no capitation or other direct tax shall be laid unless in proportion to the census. Harper's Weekly says: "In the crisis of the rebellion an income tax was enacted and borne to prevent national bankruptcy. The Supreme Court exhausted its ingenuity in upholding it on the plea that the Constitution meant by a direct tax only a tax on land, but this reasoning never satisfied the profession, nor the country." And again it says: "The decision in question has ever since stood as the extreme instance of the power of public necessity to extort from the highest tribunal a perverse and destructive interpretation of the fundamental law. The real justification for the income tax of 1863 was that it violated one clause of the Constitution to save the rest."

But even slight examination would show that this decision so far from being a surprising one or an ingenious wrenching of the Constitution was in accordance with the long settled interpretation of that instrument. The decision was logically compelled by that in the case of Hylton *v.* United States, 3 Dall. 177, made in 1796, when Ellsworth, Chief Justice, with Patterson and Wilson, Associate Justices, each of whom had been in the constitutional convention and taken part in the discussion of the clause as to direct taxes, were on the bench of the Supreme Court. Ellsworth, the Chief Justice, not having heard the argument, did not take part in the decision, but all the judges who did take part in it agreed that a tax on carriages, which in this particular is not distinguishable from an income tax, was not a direct tax within the constitutional provision. All the writers on constitutional law, we believe, without an exception, have taken the same view; and their position is illustrated by that of Chancellor Kent, who says: "It was shown by the court that the notion that a tax on carriages was a direct tax . . . would lead to the grossest abuse and oppression. This argument was conclusive against the construction set up." 1 Kent, Com. 256. Yet, in face of the facts that the very judges who helped to frame the constitutional clause in question thus interpreted it while the Constitution was yet new, and that all the great commentators on the Constitution had been of the same opinion, which even a casual reading of the opinion so viciously attacked would disclose, this journal either through rank ignorance or conscious misrepresentation alleges that the decision was a violation of the Constitution, extorted by public necessity, and that to uphold it the court "exhausted its ingenuity." And this is the "Journal of Civilization," which once deserved the name under a chivalrous editor who despised oracular bumptiousness and scorned misrepresentation.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 23, Parts 2-6.

The annotation of these five numbers, exclusive of brief reference notes, is shown by the following index:

The part containing any note indexed will be sent with CASE AND COMMENT for one year for 75 cents.

Among the New Decisions.

Important recent decisions, a few of which are here noted, touch many questions of public interest, and the rights of individuals both in respect to person and property.

Constitutional Protection.

The right to liberty is so sacred, and the very idea of being deprived of it so repugnant, that no little importance should be attached to the West Virginia decision in Evans *v.* Johnson, 23 L. R. A. 737, which holds the appointment of a committee for a supposed lunatic to be absolutely void if made without notice to him. The decision is the more important because some courts have held to the contrary, and the statutes in some states, as shown by the annotation to this case, make no provision whatever for notice to the person whose liberty is in question. A recent letter from an attorney denouncing an outrage in a case of this kind, in which he declares that a sane man was shut up, has emphasized the importance of the subject.

A constitutional question of a different sort which has recently aroused very great interest in several states is the right of employer and employed to contract without restriction by the legislature. Of the cases of this sort the latest is the Arkansas case of Leep *v.* St. Louis, Iron Mountain & S. R. Co., 23 L. R. A. 264, which upholds restrictions on contracts of employment by corporations, but denies them in case of contracts between individuals. This does not altogether agree with some of the decisions elsewhere, which are reviewed in a note to State *v.* Loomis, 21 L. R. A. 789, and the earlier case of Com. *v.* Terry, 14 L. R. A. 325.

Municipal Corporations.

The limitation on the power of cities to contract debts under constitutional and statutory provisions is a question discussed in a note to the Kentucky case of Beard *v.* Hopkinsville, 23 L. R. A. 402, and that case itself denies the power of a city to make a contract for an annual rental of hydrants and electric lights, although the usual income was sufficient to pay all current expenses, including such rental.

The power of a city over a river on its boundary is denied in State *v.* Eason, 23 L. R. A. 520, where the low-water line of the river was held to be the boundary. The rule as to boundary of cities on navigable streams is discussed in the note to the case, by which it appears that the same rule is generally applied that obtains in the state with respect to private premises, except where the legislature has shown a different intention.

Negligence in Case of Charity.

The liability for negligent or malicious acts of employés is denied by the Kentucky case of Williamson *v.* Louisville Industrial School of Reform, 23 L. R. A. 260, in case of a state reform school. The prior decisions on the liability of charitable institutions in such cases, as appears by the note to the case, are not altogether agreed.

Somewhat akin to these decisions is that made by the United States Circuit Court of Appeals in the Eighth Circuit, in the case of Union Pacific R. Co. *v.* Artist, 23 L. R. A. 581, which denies that a railroad was liable for malpractice of physicians or carelessness of attendants at a hospital which was sustained as a charity by the company with small monthly contributions taken from the wages of the employés.

Elevators.

With the rapid increase in the use of elevators for passengers, decisions concerning them have become important. A late Indiana case, Springer *v.* Byram, 23 L. R. A. 244, applying the rule as to trespassers, holds that for injury to a newsboy, who was riding contrary to rules of which he had notice, the owner of the elevator was not liable.

Street Railways.

The injury to a passenger riding on the footboard of a street-car, who was struck by a trolley pole near the track, was regarded as the fault of the street railway company, which was held liable in the Rhode Island case of Elliott *v.* Newport St. R. Co., 23 L. R. A. 208.

Railroads.

The claim of an implied license to walk on a railroad trestle was emphatically denied in the Wisconsin case of Anderson *v.* Chicago, St. Paul, M. & O. R. Co., 23 L. R. A. 203, as against public policy. In that case an intoxicated person was killed while walking on the trestle and the company was held not liable.

The ignorance and inexperience of a child is considered as a proper element in determining its negligence in following adults between cars, in the Missouri case of Schmidt *v.* St. Louis, I. M. & S. R. Co., 23 L. R. A. 250, which holds also that care must be exercised in closing up cars at a crossing, where a narrow passageway has been left between them at a crossing.

The necessity under statute of blowing a whistle as a train approaches a crossing is held, in the case of Bittle *v.* Camden & A. R. Co., 23 L. R. A. 283, to be no excuse for negligently and wantonly giving the signal in a manner to frighten a horse.

The obligation of a consolidated railroad company to pay the debts of the former companies is upheld in the Indiana case of Chicago & I. C. R. Co. *v.* Hall, 23 L. R. A. 231, and that this case is in the line of authority clearly appears in the annotation.

Banks.

Whether an ordinary draft by one bank on another is a check or a bill of exchange of the more generic kind is a question that seems to have been but little considered judicially. A late Maryland case, Exchange Bank of Wheeling *v.* Sutton, 23 L. R. A. 173, raises the question directly and holds that is simply a check, and a note to the case shows that the other authorities substantially support the decision.

The effect of endorsing a check "For deposit" is another question of banking law that seems to be just getting into the courts. Another Maryland case, Ditch *v.* Western National Bank of Baltimore, 23 L. R. A. 164, considers this question and gives effect to the transfer to pass title to another bank, which had taken and paid for the check in good faith, where the collecting bank had received the proceeds and failed to pay them over because of insolvency. The few other cases on the subject are presented in the note to the case.

Damages for refusal to pay a check when having funds for that purpose are held in a Nebraska case of Bank of Commerce *v.* Goos, 23 L. R. A. 190, not to extend to compensation for the suffering caused by arrest of the depositor resulting from the dishonor of the check and the publishing of the facts.

Another bank case, Flannagan v. California Nat. Bank, 23 L. R. A. 836, holds that a promise by the cashier of a national bank to accept a draft drawn on a depositor is void as exceeding the powers of the bank, when made without any consideration. The power of a bank to be an accommodation indorser is the subject of annotation to the case.

Crops.

Interesting decisions about crops, recently made, include that in Dickey *v.* Waldo, 23 L. R. A. 449, upholding a contract to give one half of a crop of peaches for any two out of ten years as pay for planting the trees. The great number of cases respecting sale or mortgage of future crops are collected and analyzed in the note.

A Kansas case respecting the right to levy on crops, Polley *v.* Johnson, 23 L. R. A. 258, upholds it as to annuals, which are the product of industry, and a note to the case presents the multitude of decisions on this subject.

Chattel Mortgages.

The peculiar effect of a clause in a chattel mortgage, giving the mortgagee a right to possession if he deems himself unsafe, or something to that effect, is possibly not realized always by lawyers who insert it, or by clients for whom it is done. It is presumably inserted for the benefit of the mortgagee, while in reality it restricts his rights, when it has any effect at all. This matter is suggested by the decision in Robinson *v.* Gray, 23 L. R. A. 780, holding that a clause giving the mortgagee possession whenever he "shall choose" gives him the absolute right, and the annotation to the case which shows that it is otherwise with the other clause above mentioned.

Contracts.

The effect of death to relieve from obligation under a contract is a question of much interest and sometimes of difficulty. In Drummond *v.* Crane, 23 L. R. A. 707, the death of a party is held not to prevent continuance of a contract for a water supply. The subject is carefully developed, with a review of the different authorities, in a note to the case.

Foreign Corporations.

In the swift development of the law as to foreign corporations, a recent decision in the South Dakota case of Foster *v.* Charles Betcher Lumber Co., 23 L. R. A. 490, holding a local agent of a foreign lumber company to be a "managing agent" on whom, under the statute, process might be served, is interesting. A note to the case reviews the already large number of authorities on the question "who may be served with process in a suit against a foreign company," and shows how greatly the law has changed since the earlier decisions, which deny the power to sue a foreign corporation at all.

The Humorous Side.

A "hustler" more acquainted with business than with the dictionary recently declared that on a real estate trade he "consumed" the mortgage on the property obtained, and that the mortgage on the property exchanged was "consumed" by the other party. This indicates a new mode of summary relief for hungry mortgagors.

The hustler has a brother like unto him in activity and vocabulary, but with different direction of energy. The latter is heartily interested in religious work and in reporting this lately to a body of people he told of numerous places in each of which he had "instigated a prayer meeting."

A sign in the window of a Rochester house says: "this place will be open Sep. 1. for tairlor buisness."

In respect to a claim for commissions in procuring a lease from a city, a court lately remarked that if, on the facts there shown, the claim could be sustained, "a speaking acquaintance with a broker is a hazardous connection."

The condition of a drunken man on a railroad track draws from the court in a late case the remark that "men must be content, especially when they are trespassers, to enjoy the pleasures of intoxication *cum periculis*."

The significance of proper names is sometimes humorously suggested in law reports. A late Pennsylvania case illustrates this, in which was involved a loan to a relative by Miss Cashdollar (31 Pa. 247).

Another illustration was that of United States *v.* Coppersmith (4 Fed. Rep. 198) in which the defendant, although evidently true to his name, was charged with being false to his government in counterfeiting the national coin.

Again a very recent case suggesting a lack of harmony between warblers is that of Canary *v.* Lillian Russell.

A different sense is touched by the title of the case of "Waugh *v.* Skunk (20 Pa. 133) which seems vaguely to suggest some nasal dissatisfaction.